

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 19-1693 (ADC)

- a. **\$1,000,000.00** contained in Charles Schwab & Co., Inc. account #**9991-8933**, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. **\$3,425,512.93** contained in Charles Schwab & Co., Inc. account #**9991-8933**, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) **Myco Boat Trailer Vin #1M9BA4031JB817150**;
- d. One (1) **Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200**;
- e. One (1) **Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864**;
- f. **\$71,551.40** contained in checking account number **855356700** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- g. **\$276,583.84** contained in savings account number **3653269077** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. **\$100,306.70** contained in savings account number **317222591** at JP Morgan Chase, account is in the name of Keith Ellison and Jaklyn F. Garrett;
- i. One (1) **2018 Invincible 40-foot catamaran Hull #IVBC0035B818**;
- j. One (1) **2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787**;

Defendants.

**MOTION TO DEEM AS UNOPPOSED CLAIMANTS DONALD KEITH ELLISON
AND 259 SEAHORSE LLC'S MOTION FOR RELIEF FROM STAY AND TO
DISMISS THE GOVERNMENT'S COMPLAINT FOR CIVIL FORFEITURE**

Sonia I. Torres-Pabón (USDC-PR No. 209310)
MELLENDEZ TORRES LAW
MCS Plaza, Suite 1200
255 Ponce de Leon Ave.
San Juan, PR 00917

William Leone (*pro hac vice*)
Seth M. Kruglak (*pro hac vice*)
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019

Attorneys for Claimants Donald Keith Ellison and 259 Seahorse LLC

TO THE HONORABLE AIDA M. DELGADO-COLÓN:

COMES NOW Claimants Donald Keith Ellison (“Ellison”) and 259 Seahorse LLC (“Seahorse,” and together with Ellison, “Claimants”), through the undersigned attorneys respectfully state, allege and pray as follows:

1. Presently before the Court is Claimants’ Motion for Relief from Stay and to Dismiss the Government’s Complaint for Civil Forfeiture, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Supplemental Rule G(8)(b), filed on August 19, 2019 (Dkt No. 16).

2. According to the Court’s CM/ECF confirmation, the deadline for the Government’s response was September 3, 2019. Although fourteen days from the date of filing would have been September 2, 2019, that day was a federal holiday (Labor Day), and under Rule 6(a)(1)(C) of the Federal Rules of Civil Procedure, the filing deadline is extended until the end of the next day. Pursuant to Federal Rule of Civil Procedure 5(b)(2)(E) and Local Civil Rule 5(b)(2), “receipt of the notice of electronic filing generated by the Court’s electronic case filing system shall constitute the equivalent of service of the pleading or other paper on persons.”

3. Pursuant to Local Civil Rule 7(b), “[u]nless within fourteen (14) days after the service of a motion the opposing party files a written objection to the motion, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.”

4. Courts in this District have applied Local Civil Rule 7(b) to motions to dismiss. *See Alicea-Diaz v. United States*, No. 3:14-CV-01871 (JAF), 2016 WL 373948, at *1 (D.P.R. Jan. 29, 2016) (“Under Local Rule 7(b), if the party opposing a motion fails to object to it in writing within fourteen days of its service, ‘the opposing party shall be deemed to have waived objection’ to the motion. As of the date of this opinion, nearly one month after service of the Government’s partial motion to dismiss, plaintiffs have failed to object or in any way respond to the motion.

Thus, the court finds that plaintiffs have waived any and all objections to the motion.”) (quoting Local Civil Rule 7(b)).

5. Additionally, forfeiture actions are strongly disfavored when a litigant’s rights are not adequately protected. *See United States v. A. One Urban Lot No. 12,144 Located at St. 1 No. A-24, Magnolia Gardens, No. CIV. 92-2648 (GG)*, 1993 WL 138275, at *1 (D.P.R. Mar. 24, 1993) (“The First Circuit Court of Appeals has agreed that forfeitures are strong medicine, disfavored in our jurisprudence. The standards applied to forfeiture actions attempt to curb excesses of government power and afford property owners some protection from the harshness of a forfeiture’s attendant sanctions.”) (citing *United States v. One Parcel of Real Prop. With Bldg., Appurtenances, & Improvements Known as 304-390 W. Broadway, S. Bos., Mass.*, 964 F.2d 1244, 1248 (1st Cir. 1992)).

6. To date, the Government has not filed a response to Claimants’ Motion seeking relief from the stay and dismissal, nor has the Government requested an enlargement of time in which to file a response within the fourteen-day period prescribed by the Local Civil Rules. As a result, the Government has waived any objection.

WHEREFORE, it is respectfully requested that this Honorable Court take notice of the present motion and deem the Claimants’ Motion for Relief from Stay and to Dismiss the Government’s Complaint for Civil Forfeiture, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Supplemental Rule G(8)(b), filed on August 19, 2019 (Dkt No. 16) as unopposed in accordance with the provisions of Local Civil Rule 7(b), and enter judgment lifting the stay and dismissing the case pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Supplemental Rule G(8)(b).

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 10th day of September 2019.

I HEREBY CERTIFY that on this same date I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.

MELLENDEZ TORRES LAW

MCS Plaza, Suite 1200
255 Ponce de Leon Ave.
San Juan, PR 00917
Tel: (787) 281-8100
Fax: (787) 281-8310

s/Sonia I. Torres Pabón

Sonia I. Torres-Pabón
USDC-PR No. 209310
storres@melendeztorreslaw.com

NORTON ROSE FULBRIGHT US LLP

1301 Avenue of the Americas
New York, NY 10019
Tel: (212) 318-3000
Fax: (212) 318-3400

/s/ William J. Leone

William Leone (*pro hac vice*)
william.leone@nortonrosefulbright.com

/s/ Seth M. Kruglak

Seth M. Kruglak (*pro hac vice*)
seth.kruglak@nortonrosefulbright.com